IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUNATION SHEET

CIVIL APPLICATION NO.3247 OF 2007
IN
FIRST APPEAL NO.878 OF 2003

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Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	**Court's or Judge's orders**

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Mr.M.H.Munshi for the Applicant
Mr.S.A.Jalan for the Respondent.

CORAM: A.S.OKA, J.
DATE : SEPTEMBER 28,2007.

P.C.:

1. Heard Advocates for the parties. When the appeal filed by the Applicant was listed for admission on 29th January 2007, none appeared for the applicant and therefore, the Appeal was dismissed for default. The present application is made on 6th March 2007. Application is opposed by the Advocate for the Respondent by pointing out that there is no explanation for the absence of the Applicant and his Advocate. He placed reliance on the decision of the Apex court in the case of Ramjit Bulluir Dhobi & another vs. Alfried D'Aguiar and others (A.I.R. 1962

S.C. page 361). He also submitted that on earlier occasion, the Appeal was dismissed and later on it was restored.

2. The fact remains that on 29th January 2007, the Advocate for the Applicant/Appellant was absent and that is why the Appeal was dismissed for default. The Appellant cannot be allowed to suffer due to default on the part of his Advocate. It is true that on earlier occasion also the Appeal was dismissed for default. However, the prejudice which may be caused to the Respondents can be ordered to be compensated by ordering payment of costs.

3. Hence, rule is made absolute in terms of prayer clause (a) and (d) subject to condition of the Applicant paying costs of Rs.3,500/- to the Respondents within a period of six weeks from today. Payment of costs will be a condition precedent.

JUDGE